



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

PROPERTY AND SPECIAL TAXES DEPARTMENT

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BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (Ret.)
Second District, Lancaster

MICHELLE STEEL
Third District, Orange County

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

December 6, 2013

CYNTHIA BRIDGES
Executive Director

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the December 17, 2013 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulation 4902, *Relief From Liability*.

Action 1 on the Agenda concerns proposed amendments to Regulation 4902 to extend relief of liability for the reliance on written advice or reliance on a prior audit to another person in certain circumstances. Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in this issue.

I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m.** on **December 17, 2013** in Room 121 at the address shown above.

Sincerely,

David J. Gau, Deputy Director
Property and Special Taxes Department

DJG: rsz

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District

Honorable Michelle Steel, Vice Chair, Third District

Honorable Betty T. Yee, Member, First District (MIC:71)

Senator George Runner (Ret.), Member, Second District (via email)

Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

(via email)

Mr. David Hunter, Board Member's Office, Fourth District

Mr. Michael Vigil, Board Member's Office, Fourth District

Mr. Neil Shah, Board Member's Office, Third District

Mr. Tim Treichelt, Board Member's Office, Third District
Mr. Alan LoFaso, Board Member's Office, First District
Ms. Mengjun He, Board Member's Office, First District
Mr. Sean Wallentine, Board Member's Office, Second District
Mr. James Kuhl, Board Member's Office, Second District
Mr. Lee Williams, Board Member's Office, Second District
Mr. Alan Giorgi, Board Member's Office, Second District
Ms. Lynne Kinst, Board Member's Office, Second District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Cynthia Bridges (MIC:73)
Mr. Randy Ferris (MIC:83)
Mr. Todd Gilman (MIC: 70)
Mr. Robert Tucker (MIC:82)
Mr. Bradley Heller (MIC:82)
Mr. Scott Claremon (MIC:82)
Mr. Lawrence Mendel (MIC:82)
Ms. Susanne Buehler (MIC:92)
Mr. Bradley Miller (MIC:92)
Ms. Kirsten Stark (MIC:50)
Mr. Clifford Oakes (MIC: 50)
Ms. Lynn Whitaker (MIC:50)
Ms. Lynn Bartolo (MIC: 57)
Ms. Debbie Kalfsbeek (MIC: 57)
Mr. Lou Feletto (MIC: 62)
Ms. Lauren Simpson (MIC: 70)

Formal Issue Paper Number 13-011

Agenda
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AGENDA — December 17, 2013 Business Taxes Committee Meeting
Proposed Amendments to Regulation 4902, *Relief From Liability*, extension of relief based on written advice

Action 1 – Staff Recommendation	<p><u>Regulation 4902. <i>Relief From Liability</i>.</u></p> <p>(a) IN GENERAL. A person may be relieved from the liability for the payment of tax, defined in section 4901(a)(7), imposed pursuant to applicable tax laws, defined in section 4901(a)(1), including any penalties and interest added to the tax, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on:</p> <p style="padding-left: 40px;">(1) Written advice given by the board under the conditions set forth in subdivision (b) below, or</p> <p style="padding-left: 40px;">(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or</p> <p style="padding-left: 40px;">(3) Written advice given by the board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.</p> <p>Written advice from the board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or <u>a person with shared accounting and common ownership with the audited person</u> or by a legal or statutory successor to that person.</p> <p>The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or</p>
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AGENDA — December 17, 2013 Business Taxes Committee Meeting
Proposed Amendments to Regulation 4902, *Relief From Liability*, extension of relief based on written advice

Action 1 – Staff Recommendation	<p>constitutional law and board regulations or the date of a final decision of a court of competent jurisdiction regardless that the board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.</p> <p>(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.</p> <p>Advice from the board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.</p> <p>(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report <u>by the audited person and any person with shared accounting and common ownership with the audited person</u>. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person</p>
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AGENDA — December 17, 2013 Business Taxes Committee Meeting
Proposed Amendments to Regulation 4902, *Relief From Liability*, extension of relief based on written advice

<p>Action 1 – Staff Recommendation</p>	<p>seeking relief knew such advice was erroneous.</p> <p><u>For the purposes of this regulation a person is considered to have shared accounting and common ownership if the person:</u></p> <p><u>(1) Is engaged in the same line of business as the audited person,</u></p> <p><u>(2) Has common verifiable controlling ownership of 50% or greater ownership or has a common majority shareholder with the audited person, and</u></p> <p><u>(3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:</u></p> <p><u>(A) Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.</u></p> <p><u>(B) Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.</u></p> <p><u>(C) Shared accounting policies and procedures.</u></p> <p><u>These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as</u></p>
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AGENDA — December 17, 2013 Business Taxes Committee Meeting
Proposed Amendments to Regulation 4902, *Relief From Liability*, extension of relief based on written advice

Action 1 – Staff Recommendation	<p><u>notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.</u></p> <p>(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL. Advice from the board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:</p> <p>(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or</p> <p>(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.</p> <p>(e) TRADE OR INDUSTRY ASSOCIATIONS. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.</p>
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Issue Paper Number 13-011



- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

Proposed Amendments to Regulation 4902, *Relief From Liability*; extension of relief based on written advice

I. Issue

Should the Board revise Regulation 4902, *Relief From Liability*, to extend relief of liability for reliance upon written advice or reliance on a prior audit to another person if that person has a common controlling ownership, and shares accounting functions with the written advice recipient?

II. Alternative 1 - Staff Recommendation

Staff recommends that the Board approve and authorize the publication of amendments to Regulation 4902, *Relief From Liability*, as proposed in Exhibit 2 to extend reliance upon written advice relief to a person if the liability was the result of a person relying on erroneous advice received or provided from the prior audit of another person when:

1. The person seeking relief is engaged in the same line of business or activity as the audited person;
2. The person seeking relief shares with the audited person common verifiable controlling ownership of 50% or greater or has a common majority shareholder;
3. The person seeking relief has shared accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
 - Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation exists.
 - A shared accounting staff or outside firm maintains books and records and prepares returns and/or schedules for Board of Equalization (BOE) tax and fee programs.
 - Shared accounting policies and procedures exist.

The requirements must be established as existing throughout the periods for which the relief is sought. In addition, staff maintains that for the same reason these related parties would reasonably rely on the original advice, they would also reasonably be expected to rely on subsequent corrective advice from the BOE. Accordingly, if a written rescission is provided to the audited person or to any person with shared controlling ownership and centralized accounting functions, it will serve as notification to the parties that relied on prior advice that the prior written advice may no longer be relied upon. These proposed

amendments conform with the revisions to Regulation 1705, *Relief From Liability*, adopted at the August 13, 2013 Business Taxes Committee meeting.

III. Other Alternative(s) Considered

Do not approve the proposed changes to Regulation 4902, *Relief From Liability*.

IV. Background

All programs administered by the BOE's Property and Special Taxes Department's (PSTD) special taxes and fees divisions have law sections corresponding to section 6596 of the Revenue and Taxation Code for the sales and use tax program, granting taxpayers relief of liability due to reliance upon written advice. For purposes of this issue paper, the phrase "section 6596 relief" and "section 6596" will be used in lieu of listing all sections of the Revenue and Taxation Code pertaining to relief of liability due to reliance upon written advice provided by statute for the special taxes and fee programs administered by the Board.

Initially, all special taxes and fee programs administered by the BOE's PSTD had individual regulations for section 6596 relief. On February 3, 2003, each of the regulations were amended or adopted to reference section 6596 relief provided under Regulation 4902, *Relief From Liability*.

Please refer to Exhibit 3 for a list of Revenue and Taxation Code sections and Regulations by tax/fee program which correspond to section 6596 relief.

Regulation 4902, *Relief From Liability*, was adopted by the Board on February 3, 2003, to allow a single, detailed regulation providing section 6596 relief guidelines for all special taxes and fees programs administered by the BOE's PSTD. Regulation 4902, *Relief From Liability* was developed to mirror the 6596 relief provisions granted under Sales and Use Tax Regulation 1705, *Relief From Liability*, and incorporates all of Regulation 1705's previous amendments made through February 3, 2003, including extending 6596 relief to trade or industry association members when an association requests written advice on behalf of its members.

Revenue and Taxation Code section 6596 provides for relief from tax/fees, interest and penalty charges due on a transaction or activity if the Board determines that the tax/feepayer failed to pay the tax or fee because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the activity or transaction; the request must have identified the tax/feepayer to whom the advice applied; and, the request must have fully described the facts and circumstances of the activity or transaction. Regulation 4902, *Relief From Liability* (c) states, in part, that "[p]resentation of the person's books and records for examination by an auditor shall be deemed a written request for the audit report."

All special taxes and fee section 6596 statutes contain a subsection (d) clause providing that only the "person" making a request for written advice shall be entitled to rely upon BOE's written advice to that person. Additionally, all special taxes and fees programs have a corresponding reference to Revenue and Taxation Code section 6005 for a definition of a "person." Generally, tax/feepayers cannot obtain relief by relying upon a written communication from the BOE given or addressed to another person, even if the transaction or activity is similar. However, a person may rely upon advice given to the person's representative, provided that the representative identifies the person for whom the advice is requested. Please refer to Exhibit 3 for the special taxes and fees programs law sections corresponding to sections 6596(d) and 6005.

V. Discussion

At its August 13, 2013 Business Taxes Committee Meeting, the Board authorized publication of an amended Regulation 1705, *Relief From Liability*, which extended 6596 relief to a person who, under the sales and use tax program, relies on advice provided in a prior audit of a person with shared accounting and common ownership. A complete background and discussion of the issue can be found in the Regulation 1705 Issue Paper, http://www.boe.ca.gov/meetings/pdf/IP_1705_Package.pdf.

During the same meeting, the Board recommended staff amend the regulations for the special taxes and fee programs to incorporate similar relief provisions for those tax and fee payers. All special taxes and fees regulations pertaining to section 6596 were adopted or amended to reference Regulation 4902 for section 6596 relief in February 2003; therefore only Regulation 4902 requires amending. Amending Regulation 4902 to incorporate the language contained in Regulation 1705 approved by the Board on August 13, 2013, would ensure the BOE's programs are administered in a uniform manner.

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Staff recommends that the Board approve and authorize the publication of Regulation 4902, *Relief From Liability*, as proposed in Exhibit 2, to extend relief of a liability to a person if the liability was a result of the person relying on erroneous advice received or provided from the prior audit of another person. The person seeking relief must meet the following criteria:

1. The person seeking relief must be engaged in the same line of business or activity as the audited person;
2. The person seeking relief must share with the audited person common verifiable controlling ownership of 50% or greater or has a common majority shareholder;
3. The person seeking relief must have shared accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
 - Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax or fee return preparation.
 - A shared accounting staff or outside firm which maintains books and records and prepares tax or fee returns for programs administered by the BOE.
 - Shared accounting policies and procedures.

The new requirements must be established as having existed throughout the periods for which relief is sought. In addition, staff maintains that for the same reason these related parties would reasonably rely on the original advice, they would also reasonably be expected to rely on subsequent corrective written advice provided by the BOE. Accordingly, if a written rescission is provided to the audited person or to any person with shared controlling ownership and centralized accounting functions, it will serve as notification to the parties that relied on the prior advice that the prior written advice may no longer be relied upon.

B. Pros of Alternative 1

- Ensures special taxes and fee program's regulation contains conforming language to the sales and use tax program's Regulation 1705.
- Clarifies that reliance upon written advice relief provisions extend to tax and feepayers who would be reasonably expected to rely on the advice given during a prior audit.
- The requirement that the related person share common ownership with the audited person or written advice recipient is specific and narrowly tailored.
- The proposed revisions are also limited to situations in which a person would reasonably be expected to rely on the advice by the provision that requires the elements to exist throughout the period for which relief is sought and also indicates if the BOE provides a written notification to the audited person or any person with shared controlling ownership and centralized accounting functions, the advice may no longer be relied upon.

C. Cons of Alternative 1

The requirements that the person be engaged in the same line of business and share accounting functions are narrowly defined.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation does require adoption of a revised Regulation 4902, *Relief From Liability*.

E. Operational Impact of Alternative 1

Staff will publish the proposed amendments to Regulation 4902 and thereby begin the formal rulemaking process. Staff will also notify tax and feepayers of the revised regulation through other outreach efforts (website revisions, newsletter articles, etc.).

F. Administrative Impact of Alternative 1

1. Cost Impact

The workload associated with publishing the regulation and engaging in other outreach efforts is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

Minimal. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

While the overall impact is minimal, tax/feepayers seeking reliance upon written advice relief would have to provide sufficient documentation to allow staff to determine if they are eligible to have the relief extended to them.

H. Critical Time Frames of Alternative 1

Implementation will begin 30 days following approval of the regulation by the State Office of Administrative Law.

VII. Other Alternatives

A. Description of Alternative

Do not approve proposed Regulation 4902, *Relief From Liability*.

B. Pros of Alternative

The BOE would not incur the workload associated with processing and publicizing the regulation.

C. Cons of Alternative

- Not revising Regulation 4902 would result in the continuation of inconsistencies between the special tax and fee programs and those of the sales and use tax program, which provides relief from liability guidance in Regulation 1705.
- Relief to tax and feepayers who incur liabilities because of their reasonable reliance on prior audit advice to a person within the same industry that has shared accounting functions and a common controlling ownership will continue to be denied under the current language in Regulation 4902.

D. Statutory or Regulatory Change for Alternative

None.

E. Operational Impact of Alternative

None.

F. Administrative Impact of Alternative

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative

None.

H. Critical Time Frames of Alternative

None.

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Preparer/Reviewer Information

Prepared by: Policy and Compliance Division, Property and Special Taxes Department

Current as of: November 22, 2013

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATIONBOARD OF EQUALIZATION
REVENUE ESTIMATE

**Proposed Amendments to Regulation 4902, *Relief From Liability*;
extension of relief based on written advice****I. Issue**

Should the Board revise Regulation 4902, *Relief From Liability*, to extend relief of liability for reliance upon written advice or reliance on a prior audit to another person if that person has a common controlling ownership or is the successor, and shares accounting functions with the written advice recipient?

II. Alternative 1 - Staff Recommendation

Staff recommends that the Board approve and authorize the publication of Regulation 4902, *Relief From Liability*, as proposed in Exhibit 2 to extend reliance upon written advice relief to a person if the liability was the result of a person relying on erroneous advice received or provided from the prior audit of another person when:

1. The person seeking relief is engaged in the same line of business or activity as the audited person;
2. The person seeking relief shares with the audited person common verifiable controlling ownership of 50% or greater or has a common majority shareholder;
3. The person seeking relief has shared accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:
 - Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation exists.
 - A shared accounting staff or outside firm maintains books and records and prepares returns and/or schedules for Board of Equalization tax and fee programs.
 - Shared accounting policies and procedures exist.

The requirements must be established as existing throughout the periods for which the relief is sought. In addition, staff maintains that for the same reason these related parties would reasonably rely on the original advice, they would also reasonably be expected to rely on subsequent corrective advice from the Board. Accordingly, if a written

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rescission is provided to the audited person or to any person with shared controlling ownership and centralized accounting functions, it will serve as notification to the parties that relied on the prior written advice that the prior written advice may no longer be relied upon.

III. Other Alternative(s) Considered

Do not approve proposed amendment to Regulation 4902, *Relief From Liability*.

Background, Methodology, and Assumptions**Alternative 1 – Staff Recommendation**

Staff recommendation will amend Regulation 4902 to incorporate the language contained in Regulation 1705 approved by the Board on August 13, 2013 ensuring the Board's programs are administered in a uniform manner.

Therefore, staff recommendation will have a minimal impact on revenues because it is expected that only a small number of businesses currently excluded from relief from liability based on prior written advice will be extended relief. In addition, staff recommendation clarifies that relief from liability based on prior written advice extends to taxpayers who would be reasonably expected to rely on the erroneous advice given during a prior audit. Staff further explains that the provisions that the related person share common ownership with the audited person are specific and narrowly tailored. Finally, staff asserts that the proposed revisions are also limited to situations in which a person would reasonably be expected to rely on the erroneous advice by the provision that requires the elements to exist throughout the period for which relief is sought. Another limiting factor is the provision that if the Board provides a written notification to the audited person or to any person with shared controlling ownership and centralized accounting functions, it will serve as notification to all parties that relied on the prior advice that the prior written advice may no longer be relied upon.

Other Alternatives Considered

Alternative 2 – Do not amend Regulation 4902, *Relief From Liability*.

There is nothing in the alternative 2 that would impact special taxes and fees revenue.

Revenue Summary

Alternative 1 – staff recommendation will have a minimal impact on revenue.

Alternative 2 – alternative 2 does not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. This estimate is subject to suggested changes made by Mr. Joe Fitz, Chief, Research and Statistics Section, Legislative and Research Division, and Ms. Debbie Kalfsbeek, Administrator, Program Policy and Administration Branch,

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Property and Special Taxes Department. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of November 22, 2013.

REGULATION 4902. RELIEF FROM LIABILITY.

Reference: Sections 7657.1, 8879, 30284, 32257, 40104, 41098, 43159, 45157, 46158, 50112.5, 55045, and 60210, Revenue and Taxation Code.

(a) GENERAL. A person may be relieved from the liability for the payment of tax, defined in section 4901(a)(7), imposed pursuant to applicable tax laws, defined in section 4901(a)(1), including any penalties and interest added to the tax, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the board to be due to reasonable reliance on:

(1) Written advice given by the board under the conditions set forth in subdivision (b) below, or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) Written advice given by the board in a prior audit ~~of that person~~ under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or a person with shared accounting and common ownership with the audited person or by a legal or statutory successor to that person.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and board regulations or the date of a final decision of a court of competent jurisdiction regardless that the board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under

subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION. Advice from the board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT. Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report by the audited person and any person with shared accounting and common ownership with the audited person. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the board" for purposes of this regulation. A census, (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

For the purposes of this section a person is considered to have shared accounting and common ownership if the person:

- (1) Is engaged in the same line of business as the audited person,
- (2) Has common verifiable controlling ownership of 50% or greater ownership or has a common majority shareholder with the audited person, and
- (3) Shares centralized accounting functions with the audited person. The audited person routinely follows the same business practices that are followed by each entity involved. Evidence that may indicate sharing of centralized accounting functions includes, but is not limited to, the following:

- A. Quantifiable control of the accounting practices of each business by the common ownership or management that dictates office policies for accounting and tax return preparation.
- B. Shared accounting staff or an outside firm who maintains books and records and prepares returns for tax and fee programs administered under the Revenue and Taxation Code sections referenced under this regulation.
- C. Shared accounting policies and procedures.

These requirements must be established as existing during the periods for which relief is sought. A subsequent written notification stating that the advice was not valid at the time it was issued or was subsequently rendered invalid to any party with shared accounting and common ownership, including the audited party, serves as notification to all parties with shared accounting and common ownership, including the audited party, that the prior written advice may not be relied upon as of the notification date.

(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL. Advice from the board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above.

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

(e) TRADE OR INDUSTRY ASSOCIATIONS. A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

History: Adopted February 5, 2003, effective May 28, 2003. The underscored citation indicates an electronic hyperlink to the cite.

List of Relief From Liability Based on Reliance Upon Written Advice Regulations and Statutes for Special Taxes and Fees Programs

Tax or Fee Program	Regulation	Regulation-Referenced R & T Code	Person Requesting Written Advice Must be Person Receiving : Referenced R & T Code	"Person" Defined Referenced Code
Motor Vehicle Fuel Tax	1124	7657.1	7657.1(b)	7329 (R&T)
Underground Storage Tank Fee	1248	50112.5	50112.5(b)	25299.25 (H&S)*
Use Fuel Tax	1335	8879	8879(b)	8606 (R&T)
Diesel Fuel Tax	1422	60210	60210(b)	60008 (R&T)
Oil Spill Prev. & Admin. Fee	2250	46158	46158(b)	46020 (R&T)
Energy Resources Surcharge	2303	40104	40104(b)	40004 (R&T)
Emergency Telephone Users Surcharge	2432	41098	41098(b)	41003 (R&T)
Alcoholic Beverage Tax	2570	32257	32257(b)	23008 (B&P)**
Hazardous Substances Tax	3021	43159	43159(b)	43006 (R&T)
Integrated Waste Mgmt. Fee	3302	45157	45157(b)	45006 (R&T)
Fee Collections Procedure Law	3502	55045	55045(b)	55002 (R&T)
Cigarette and Tobacco Products Tax	4105	30284	30284(b)	30010 (R&T)

*Health and Safety Code

**Business and Professions Code